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Attorneys for Defendant  
CITY OF SAN LEANDRO

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

INTERNATIONAL CHURCH OF THE  
FOURSQUARE GOSPEL,

Plaintiff,

v.

CITY OF SAN LEANDRO, a municipal  
corporation,

Defendant.

FAITH FELLOWSHIP FOURSQUARE  
CHURCH,

Real Party in Interest.

Case No. C07-03605-PJH

CITY OF SAN LEANDRO'S  
EXHIBITS IN SUPPORT OF ITS  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR PARTIAL  
SUMMARY ADJUDICATION ON  
DEFENDANT'S AFFIRMATIVE  
DEFENSES  
(Plaintiff's Motion No. 1)

Hearing:

Date: October 1, 2008

Time: 9:00 a.m.

Courtroom: 3

Honorable Phyllis J. Hamilton  
Complaint Filed: 7/12/07

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Dated: September 10, 2008

MEYERS, NAVE, RIBACK, SILVER &amp; WILSON

By \_\_\_\_\_ /s/  
 DEBORAH J. FOX  
 Attorneys for Defendant  
 CITY OF SAN LEANDRO

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**EXHIBIT 28**

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3  
4 INTERNATIONAL CHURCH OF THE  
5 FOURSQUARE GOSPEL,  
6 Plaintiff,  
7 vs. No. C 07-03605 PJH  
8 CITY OF SAN LEANDRO, et al.,  
9 Defendants,  
10 \_\_\_\_\_/  
11 FAITH FELLOWSHIP FOURSQUARE  
12 CHURCH,  
13 Real Party in Interest.  
14 \_\_\_\_\_/  
15

16 DEPOSITION OF JOHN JERMANIS

17 DATE: MAY 19, 2008

18 TIME: 2:35 P.M.

19 LOCATION: MEYERS NAVE RIBACK SILVER & WILSON  
20 555 13th Street  
21 Suite 150  
22 Oakland, California 94607

23 Reported By: Jane H. Stuller  
24 Certified Shorthand Reporter  
25 License Number 7223, RPR

Page 1

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1           A. For about 13 years. So I was almost 26 years  
2 within the finance department, about nearly half of that  
3 as the assistant finance director, and then -- and then  
4 the other half as the finance director.

5           Q. Okay. Luke Sims says that you opposed the  
6 Faith Fellowship location at Catalina -- 14600 Catalina  
7 Street.

8           MS. FOX: That's the end of the question?

9           MR. MacDONALD: Yes.

10          MS. FOX: Objection; misstates the testimony of  
11 the witness. Vague and ambiguous as to "oppose."

12 BY MR. MacDONALD:

13          Q. Did you oppose the location of the Faith  
14 Fellowship Church at 14600 Catalina Street in San  
15 Leandro --

16          MS. FOX: Objection; vague.

17 BY MR. MacDONALD:

18          Q. -- Catalina Court? Excuse me.

19          MS. FOX: Objection; vague and ambiguous as to  
20 "opposed."

21          MR. MacDONALD: Go ahead.

22          THE WITNESS: I was concerned about the issues  
23 related to the zoning, and for that reason I was against  
24 it, yes.

25 BY MR. MacDONALD:

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1 Q. What were those issues?

2 A. That the zoning did not allow assembly use at  
3 that location.

4 Q. Any other reasons?

5 A. The -- the other reasons that I had were that I  
6 felt that I wanted to see the area preserved for an  
7 industrial business park -- it's actually the -- the  
8 best of the business parks that the city has -- and  
9 wanted to see if we can't retain that campus-like look  
10 that other communities have; and that's attractive to  
11 bring in business and retain business.

12 Q. You mentioned that area was one of the best  
13 areas you have. Could you describe, during the time you  
14 worked at San Leandro, when that area came into  
15 existence as a business park?

16 A. The area actually was developed prior to '71,  
17 so it grew over a period of years. It was built by the  
18 Reynolds & Brown Development Company, and it's had a  
19 variety of high quality industrial users, but I don't  
20 believe -- I don't have the dates of when it was --

21 Q. Sure.

22 A. -- constructed.

23 Q. You mentioned -- prior to '71 was there a  
24 larger area that was developed or was it just Catalina  
25 Court by Reynolds & Brown?

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1           A. Well, actually over an extended period of time,  
2 going back, you know, into the '50s, that area developed  
3 as a variety of different industrial uses. But Reynolds  
4 & Brown assembled a large tract to be able to bring  
5 together a variety of -- of principally construction --  
6 manufacturing-type businesses of a -- of an  
7 industrial-park-kind-of setting. I think it was  
8 probably one of the earlier industrial-type parks in our  
9 area that had landscaping that was more than just a  
10 functional manufacturing site; but it was rather, an  
11 attractive business-park setting for both manufacturers  
12 and, then on occasion, some offices too.

13           Q. And going back to the question: Did it consist  
14 of more than just Catalina Court, or was that only --  
15 the only area that developed that way?

16           MS. FOX: Objection. Can you define what you  
17 mean by "Catalina Court," Counsel.

18           MR. MacDONALD: I'll show you the map.

19           MS. FOX: That would be good.

20           MR. MacDONALD: Catalina Court is everything  
21 south of Farralon Drive that on -- on Cata -- basically  
22 Catalina.

23           THE WITNESS: Well, actually Catalina Court  
24 isn't very extensive beyond, you know, Farallon Drive.  
25 I mean, there's Catalina itself. And then Catalina



1 Court is just an offshoot of Catalina. But, you know,  
2 that -- that area, I would say, Farallon and Catalina is  
3 going towards Doolittle and up to Wicks is part of the  
4 prime industrial-park setting that the city has, yes.

5 Q. So going back to what Reynolds & Brown did, did  
6 they do just the area south of Farallon, or did they do  
7 other areas beyond that?

8 A. Well, they did a lot of other areas as well.  
9 They're one of the major developers within the city.  
10 But the area that you're speaking of is one that they,  
11 you know, particularly was -- were involved in.

12 I mean, there's other parts -- many parts of  
13 the city, you go to find Reynolds & Brown developed.  
14 Some are more of a commercial nature than an industrial.

15 Q. Right. So approximately when, in your general  
16 understanding, what decade, for example, was the  
17 building at 14600 Catalina Court built?

18 A. Well, I would say it's in the '60s, '70s. I'm  
19 not sure exactly.

20 Q. Okay.

21 A. I think it was earlier. You know, probably  
22 late '60s, but I would have to look it up to see because  
23 I don't know for sure.

24 Q. Would -- I don't -- I don't have the  
25 documentation, so I won't follow up, but I have a

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1 recollection that it may have been built in the early  
2 1980s.

3 Does that sound approximately correct?

4 A. Well, as I said, I thought it was earlier, but  
5 it could very well have been.

6 Q. Okay.

7 A. I was in the finance department, you know, at  
8 that time. I wasn't involved in any of the planning  
9 related issues, so you may be correct.

10 Q. Who was the prior occupant prior to Faith  
11 Fellowship taking ownership of the parcel at Catalina  
12 Court?

13 A. It was occupied by MDL, which is a software  
14 computer-related kind of a firm. I don't know exactly  
15 what they did but, I know they were a large employer and  
16 used -- occupied the entire building.

17 Q. Approximately how many employees would they  
18 have?

19 A. I believe they had in excess of 400.

20 Q. And approximately how long were they in that  
21 location?

22 A. I don't know.

23 Q. When did MDL leave the facility?

24 A. I believe it was in 2006. I don't know exactly  
25 when.

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1 Q. When did you first become aware that Faith  
2 Fellowship Church was interested in 14600 Catalina  
3 Court?

4 A. In April of 2006.

5 Q. And what brought it to your awareness?

6 A. Well, I had a -- I had had a meeting at that  
7 time with Ed Bullock who came by to -- he set up an  
8 appointment and came by to visit with me in April of  
9 2006?

10 MS. FOX: Gentlemen, we skipped the  
11 admonitions. I don't know if you want to do that.

12 MR. MacDONALD: Oh, let's give an admonition  
13 here.

14 MS. FOX: But I will admonish --

15 MR. MacDONALD: Sure.

16 MS. FOX: -- 'cause I'm prone to do that, as  
17 you know, Mr. MacDONALD. You gentlemen --  
18 Mr. MacDonald, you need to keep your voice up, and maybe  
19 we should get you some water. I know that you were  
20 struggling there.

21 Mr. Jermanis, you need to wait. Both of you  
22 are speaking over each other periodically. You need to  
23 wait till he finishes his question to respond. The  
24 question can change by the addition of a word or two at  
25 the end.

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1 And as well, you need to extend the witness the  
2 same courtesy, please, and let him finish his response.

3 Also you may want to slow down a touch,  
4 Mr. Jermanis. Our court reporter is great, but --

5 THE WITNESS: Okay.

6 MS. FOX: -- it can get difficult. When you  
7 speak of things you know very well, people tend to go  
8 very fast.

9 And with that, I'll let you finish it up,  
10 Mr. MacDonald.

11 MR. MacDONALD: And no shrugs, no "huh-uhs" or  
12 "uh-huhs." You have to answer "yes" or "no," 'cause  
13 those things don't show up on depositions. We want full  
14 and accurate answers.

15 Q. So describe your conversation with Ed Bullock.

16 A. Ed wanted to let me know that he was  
17 representing the Faith Fellowship Church and that they  
18 had an interest in acquiring the Catalina property to  
19 relocate the church from Manor Boulevard to that  
20 location.

21 Q. Was it just Ed?

22 A. Yes.

23 Q. And what else -- what was your response or what  
24 was your -- what else happened in the conversation that  
25 you can recall?

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1 A. What I recall is that I told Ed that that  
2 property was not selling for assembly use. And I would  
3 have concerns about that because, again, I was trying to  
4 preserve the industrial-park setting of that location  
5 and felt that it should continue to be used by  
6 industrial manufacturing or business rather than a --  
7 than a church.

8 Q. Were you aware of a meeting that was scheduled  
9 by Ed Bullock and took place between Luke Sims, Hanson  
10 Hom and Debbie Pollart on behalf of the city and Gary  
11 Mortara, Dave Mortara and Ed Bullock on behalf Faith  
12 Fellowship Church about May 3rd, 2006?

13 A. I was -- I do remember them -- the staff saying  
14 that there was a meeting that they had subsequent to the  
15 meeting that I had with Ed, yes.

16 Q. How do you communicate with your planning group  
17 regarding involving projects that are coming up?

18 Do you have a regular monthly meeting with your  
19 community development director and economic -- economic  
20 development director?

21 A. I meet with what I call my development team --  
22 those people that are involved in any projects that are  
23 going on within the city -- about twice a month. And I  
24 have to communicate with the development director and  
25 then the business development director, who usually

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1 area?

2 MS. FOX: Counsel, can you define the area?

3 All along the --

4 MR. MacDONALD: It's the cluster of properties  
5 that goes from there (indicating) -- which is -- I don't  
6 know the geography of San Leandro -- to there on the  
7 map, so we're describing this cluster right here.

8 THE WITNESS: There is a combination of  
9 industrial and commercial along that area, and there are  
10 some sites that were formerly heavy industrial.

11 BY MR. MacDONALD:

12 Q. Okay. And there's some vacant land there too;  
13 is that correct?

14 A. Correct.

15 Q. But you're not aware of any industrial park  
16 land area that -- put it this way: Are there any  
17 buildings within this area that are equivalent to 14600  
18 Catalina Court in terms of the quality and the setting?

19 A. I don't believe so, no.

20 Q. After -- after this -- basically after the  
21 October 12th business development committee and -- did  
22 you attend a planning commission board of zoning  
23 adjustment workshop relating to the assembly use  
24 overlay --

25 A. No.

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## 1 CERTIFICATION OF DEPOSITION OFFICER

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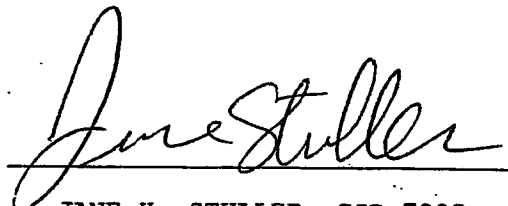
23

24

25

I, JANE H. STULLER, duly authorized to administer oaths pursuant to Section 2093(b) of the California Code of Civil Procedure, hereby certify that the witness in the foregoing deposition was by me sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of the said witness was thereafter transcribed by means of computer-aided transcription; that the foregoing is a full, complete and true record of said testimony; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing deposition and caption named, or in any way interested in the outcome of this cause named in said caption.



JANE H. STULLER, CSR 7223

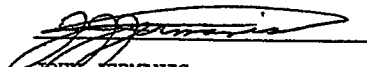
Golden Gate Reporting

1 ACKNOWLEDGEMENT OF DEPONENT

2  
3 I, JOHN JERMANIS, do hereby acknowledge I have read  
4 and examined the foregoing pages of testimony, and the  
5 same is a true, correct and complete transcription of  
6 the testimony given by me, and any changes or  
7 corrections, if any, appear in the attached errata sheet  
8 signed by me.  
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22  
23

24 6-18-08

25 Date

  
JOHN JERMANIS

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**EXHIBIT 30**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

INTERNATIONAL CHURCH OF THE  
FOURSQUARE GOSPEL,

CERTIFIED  
COPY

Plaintiff,

vs.

No. C07-03605

CITY OF SAN LEANDRO, a municipal  
corporation, DOES 1-50,

Defendants.

DEPOSITION OF GARY MORTARA

VOLUME I

(PAGES 1 - 148)

Taken before LORI A. YOCK, CSR, RPR

Certified Shorthand Reporter No. 5801

Registered Professional Reporter No. 018667

State of California

Tuesday, May 20, 2008

EMERICK & FINCH (925) 831-9029

Page 1

Emerick & Finch 800-331-9029

EXHIBIT 30

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1 MR. SNIDER: I should have been a smoker, but I  
2 never bothered taking it up.

3 MS. FOX: No, no, no, you shouldn't have.

4 That Oakland Foursquare facility, was that  
5 located in what some would term a strip commercial  
6 building?

7 A. No.

8 Q. Would it be accurate to describe it as a  
9 storefront church?

10 A. Some might. I wouldn't.

11 Q. Was it in a standalone building?

12 A. Uh-huh.

13 Q. That's a "yes"?

14 A. Yes. I'll get it.

15 Q. We'll give you a little more coffee and then your  
16 verbal responses will improve, I'm sure.

17 A. I'll get it.

18 Q. The first time is always difficult.

19 How big was the building?

20 A. Square footage?

21 Q. Yes.

22 A. It was small. Gosh, I'm going to guess 2 to  
23 3,000 square feet.

24 Q. And how many members did you have in July -- in  
25 or about July 1993?

1 A. About 65.

2 Q. And how many services were you having on Sundays?

3 A. One.

4 Q. Is your wife also a pastor?

5 A. She is a nurse.

6 Q. And what is her name, please?

7 A. Tisha, T-I-S-H-A, Mortara.

8 Q. All right. The first church was Oakland  
9 Foursquare. Was the second church Faith Fellowship?

10 A. Yes.

11 Q. And when did you move to Faith Fellowship?

12 A. September of 1993.

13 Q. And you have been there ever since?

14 A. Yep -- yes.

15 Q. Was there any break in your tenure? By that I  
16 mean did you take a year sabbatical? Did you go someplace  
17 else and regain your demonstrative good life for a period  
18 of time?

19 A. No.

20 Q. In September 1993, where was the location of  
21 Faith Fellowship?

22 A. 577 Manor Boulevard, San Leandro, California.

23 Q. Why did you move to Faith Fellowship?

24 A. The previous pastor resigned in August of '93  
25 because the constituency had dropped down to about -- I

1 keeping with your then average weekly attendance or were  
2 you hoping to and planning for accommodating growth?

3 A. I think we knew that we would continue to grow  
4 to some degree, yes.

5 Q. Do you have a figure -- a best estimate you can  
6 give me, Pastor Gary, of your average weekly attendance  
7 today?

8 A. It fluctuates between 1,300 and 1,550 in  
9 attendance.

10 Q. All right. And do you have any projections for  
11 what type of growth you hope to obtain in the next two to  
12 three years?

13 A. At this building or at Catalina?

14 Q. At this building.

15 A. We can't grow much beyond 1,700 people at this  
16 site.

17 Q. And what is your hope for the growth numbers at  
18 the Catalina site?

19 A. We want to reach as many people for Jesus  
20 Christ as we possibly can.

21 Q. Do you have an estimated figure that you had in  
22 mind for the Catalina site?

23 A. 3 to 5,000.

24 Q. Weekly attendance?

25 A. Uh-huh.

1 A. Well, you have to remember that there wasn't a  
2 church built in San Leandro for over 17 years until they  
3 built Faith Fellowship the original site. So there was  
4 no real awareness of what the rules were for churches.

5 Q. My question is was there a person at Faith  
6 Fellowship who was supposed to become aware of what the  
7 rules were so you all could know the rules of the game?

8 A. That's why I personally went to the meeting  
9 with Sam Millicek and somebody else to find out: Okay.  
10 We found a building. How can we make this a usable site  
11 for assembly? It fits all our criteria.

12 Q. So were you the person who was going to figure  
13 out the rules of the zoning and how one would move  
14 forward?

15 A. No. I was going to ask.

16 Q. So you were looking to the city folks to give you  
17 that direction?

18 A. Uh-huh.

19 Q. That's a "yes"?

20 A. Yes.

21 MS. FOX: I'm sorry. I am going to have to  
22 take a break.

23 (A recess was taken from 11:23 a.m.  
24 to 11:30 a.m.)

25 BY MS. FOX:

1 Q. Pastor Gary, do you ever recall Ed Bullok telling  
2 you that John Jermanis cautioned that Faith Fellowship  
3 should not go buy that site?

4 A. He may have..

5 Q. Do you recall that?

6 A. Vaguely.

7 Q. Do you recall that you were advised by Ed Bullok  
8 or anyone else that John Jermanis cautioned you shouldn't  
9 go hard, so to speak, with dollars that become  
10 nonrefundable on that site?

11 A. I don't remember that.

12 Q. When Ed Bullok would report to you on what  
13 happened with this meeting with John Jermanis, did he do  
14 that in writing? Did he do that by email or did he do  
15 that verbally or all of the above?

16 A. I remember verbally. I don't remember anything  
17 officially in a document.

18 Q. During the course of this transaction, did you  
19 communicate via email with Ed Bullok?

20 A. I may have.

21 Q. Did you ever make any effort to check your email  
22 accounts for production of any documents in connection  
23 with this litigation?

24 A. I checked my emails all the time so --

25 Q. So opposed to just checking your emails, which at

1           their statements."

2       BY MS. FOX:

3           Q.   So Pastor Gary, can you answer that for me? What  
4       was the conversation and who was it with about those  
5       issues?

6           A.   Again, the way it was worded was "asked." I  
7       don't remember asking them if they thought I should put  
8       deposit money down. I think it was a conversation that  
9       they brought up and my response to them was: We just  
10      need to be heard. You told us to file an application  
11      but nobody is hearing our case, and, you know, we were  
12      in negotiations on this building.

13          Q.   I understand that you were having conversations  
14      with the City staff where you were telling them: We need  
15      to get this process moving; correct?

16          A.   Uh-huh -- yes.

17          Q.   But at any time, did you have conversations with  
18      the staff where you told them that you had monies that you  
19      were now going to have to make nonrefundable in this  
20      transaction?

21          A.   Yes, I'm sure we did.

22          Q.   All right. Who do you recall telling that to?

23          A.   I would guess that it was Debbie Pollart  
24      because she was the point person, but I don't remember.

25          Q.   And is it your recollection that Ms. Pollart at



1 any time assured you that your transaction would have  
2 smooth sailing and you shouldn't worry about your  
3 nonrefundable deposits?

4 A. No. She didn't say that.

5 Q. Did you ever purchase a single-family residence  
6 at the Manor site?

7 A. Yes.

8 Q. And where was that located?

9 A. Directly next door to the church.

10 Q. And was that purchased for parking?

11 A. Parking.

12 Q. And when did that occur --

13 A. I don't --

14 Q. -- that purchase?

15 A. I don't have the date on that.

16 Q. I know we have been at it for a fair amount of  
17 time this morning, Pastor Gary, but even though you have  
18 been very diligent, I am happy to take a break if you want  
19 to take an early lunch. I am entitled to your best  
20 recollection. So this is my day to ask questions.

21 A. Okay.

22 Q. So if you can take a moment to reflect. We know  
23 when you bought the hardware store. You've told us the  
24 dates of the new facility opening. Can you help me,  
25 please, place when the purchase of that single-family home

1 occurred.

2 A. I am going to have to guess. 2005.

3 Q. And how large was the piece of property upon  
4 which the single-family home sat?

5 A. I do not know.

6 Q. Originally we were talking about the fact that  
7 you had originally had a one-acre site. You added a 1.4  
8 acre site to it for a total of 2.4.

9 As we sit here today, what is the total acreage  
10 of the Manor property?

11 A. 2.4. And then there is a house next door  
12 that's not contiguous because there is a street --  
13 cul-de-sac there.

14 Q. And is that now paved over for parking?

15 A. What paved over?

16 Q. Sorry. The single-family home that was purchased  
17 at or about 2005. Was that home then demolished?

18 A. No. Still sitting there.

19 Q. All right. What is being used at that location?

20 A. We park in the driveway, on the street, on the  
21 front lawn, and on the cul-de-sac. We purchased the  
22 house strictly so a neighbor wouldn't tie us up and take  
23 more parking from us.

24 Q. All right. And did you make any use of the  
25 interior of the house itself?

1 A. Yes.

2 Q. And do you know whose handwriting that is that  
3 says: This offer is further subject --

4 A. It's pretty good writing so it's not mine.

5 Q. And I can stipulate it's not James Lee's.

6 A. Yeah, I'm not sure who wrote that.

7 Q. How about condition F?

8 A. This agreement is specifically conditioned upon  
9 buyer, in buyer's sole judgment, determining that the  
10 subject real property is suitable for and approved for  
11 use as a church. This condition shall remain in full  
12 force and effect until removed in writing by buyer.  
13 What about it?

14 Q. Do you know who drafted that condition?

15 A. I'm assuming -- it would be an assumption -- Ed  
16 Bullok, if this is his document.

17 Q. Do you recall discussing this offer with Ed  
18 Bullok before it was submitted?

19 A. Yes.

20 Q. And did Ed Bullok advise you that it is prudent  
21 practice in a land use transaction to make sure you have  
22 land use entitlement approved before you move forward with  
23 a large purchase?

24 A. Something to that effect.

25 Q. Do you recall whether or not this condition, 36F,

1 A. David Mortara.

2 Q. Before he joined about 14 months ago, who was in  
3 charge of parking?

4 A. Volunteers.

5 Q. I know that you have identified someone as in  
6 charge of facilities. Was that Jim Lee?

7 A. Yes.

8 Q. Is parking part of facilities?

9 A. No.

10 Q. How about the Manor Bowl? Did you ever have an  
11 agreement with Manor Bowl for the provision of parking?

12 A. Verbally.

13 Q. And what was the verbal agreement you had with  
14 Manor Bowl?

15 A. Something to the effect of: Can we park cars  
16 here on Sunday mornings during our service times?

17 Q. And they said yes at some point in time?

18 A. Yes.

19 Q. And can you place for me what point in time --  
20 what time period you actually used Manor Bowl to park any  
21 cars?

22 A. I would say from the start of the opening of  
23 the new building, 2003 April, for about maybe a year.

24 Q. How much did you pay them for that?

25 A. Nothing.

1 Q. Did you shuttle people from Manor Bowl or did  
2 they walk?

3 A. They mostly walked.

4 Q. How far is it?

5 A. .3 miles.

6 Q. Did you have a shuttle bus?

7 A. No. But we do now.

8 Q. And then at some point you stopped using Manor  
9 Bowl for parking?

10 A. Yes.

11 Q. And who is the owner of Manor Bowl that you were  
12 dealing with for the parking arrangement?

13 A. I have no idea.

14 Q. Who made the verbal representation that Faith  
15 Fellowship could use that area for parking?

16 A. I did.

17 Q. Who made it on behalf of Manor Bowl?

18 A. The owner's wife or the owner. I forget which  
19 at that time.

20 Q. And do you recall that individual's name?

21 A. No, I don't. I couldn't even pick him out of a  
22 crowd of two.

23 Q. At some point in time, did Manor Bowl change  
24 ownership?

25 A. I'm not sure.

1 Q. Approximately a year later, you stopped using  
2 Manor Bowl for parking; correct?

3 A. Uh-huh.

4 Q. That's a "yes"?

5 A. Yes.

6 Q. And I understand that Manor Bowl no longer wanted  
7 you all to use their facility for parking; is that  
8 correct?

9 A. Yes.

10 Q. Did they tell you why?

11 A. They didn't tell us why. I heard other reasons  
12 why.

13 Q. All right. How did you learn that you could no  
14 longer use Manor Bowl for parking? Did the owner call you  
15 up and say: I'm sorry, Gary, but you are just going to  
16 have to stop doing that?

17 A. No, it wasn't directly to me. It was through  
18 someone maybe on staff to me.

19 Q. And how did that come to your attention?

20 A. I forget now.

21 Q. And they simply said: Stop using our parking  
22 facilities?

23 A. Yes, something to the effect they have bowling  
24 on Sunday mornings, and it was taking up from their  
25 people -- parishioners -- what do they call it --

1 A. We did.

2 MS. FOX: All right. Counsel, we have come to  
3 the bewitching hour for me. I need to terminate our  
4 deposition to be reset to finish up. I appreciate you  
5 coming early today. It ends up that my son is receiving  
6 an award tonight so I need to be there. So I appreciate  
7 your accommodation of that. And so we need to conclude.

8 There are some documents perhaps we can have  
9 before day two. I suggest we confer by email for a  
10 convenient time for day two that meets everybody's  
11 schedule.

12 MR. SNIDER: Okay.

13 THE REPORTER: Counsel, to confirm, you are  
14 ordering a copy with a disk?

15 MR. SNIDER: Yes.

16 THE REPORTER: A condensed also?

17 MR. SNIDER: Yes.

18 THE REPORTER: Thank you.

19 (The deposition was adjourned at 2:49 p.m.)  
20  
21

22 \_\_\_\_\_  
GARY MORTARA  
23  
24  
25

1 CERTIFICATE OF REPORTER

2  
3 I, LORI A. YOCK, CSR No. 5801, a Certified  
4 Shorthand Reporter in and for the State of California,  
5 do hereby certify:

6 That prior to being examined, the witness named  
7 in the foregoing deposition was by me duly sworn to  
8 testify to the truth, the whole truth, and nothing but  
9 the truth.

10 That said deposition was taken before me at the  
11 time and place set forth and was taken down by me in  
12 shorthand and thereafter reduced to computerized  
13 transcription under my direction and supervision, and I  
14 hereby certify the foregoing deposition is a full, true  
15 and correct transcript of my shorthand notes so taken.

16 And I further certify that I am neither counsel  
17 for nor related to any party to said action nor in any  
18 way interested in the outcome thereof.

19 IN WITNESS WHEREOF, I have hereunto subscribed  
20 my name this 1st day of June, 2008.

21  
22 

23 LORI A. YOCK  
24 CSR No. 5801  
25



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

INTERNATIONAL CHURCH OF THE  
FOURSQUARE GOSPEL,

CERTIFIED  
COPY

Plaintiff,

vs.

No. C07-03605

CITY OF SAN LEANDRO, a municipal  
corporation, DOES 1-50,

Defendants.

/

DEPOSITION OF GARY MORTARA

VOLUME II

(PAGES 149 - 214)

Taken before LORI A. YOCK, CSR, RPR

Certified Shorthand Reporter No. 5801

Registered Professional Reporter No. 018667

State of California

Friday, June 6, 2008

EMERICK & FINCH (925) 831-9029

Page 149

1 research and find it.

2 Q. Did you talk to Jim Lee about whether or not he  
3 remembered if condition 36F, the typewritten condition,  
4 had, in fact, been deleted from the transaction?

5 A. I may have.

6 Q. And do you recall what he said?

7 A. He didn't know what happened to it.

8 Q. When you all proposed the new sanctuary back in  
9 2003 that opened in Easter 2003, do you recall who the  
10 planning person was that you primarily dealt with in that  
11 regard with the City?

12 A. I don't, but John Jermanis said he was there at  
13 that time and he was part of the approval process.

14 Q. Do you recall whether or not the City discouraged  
15 you in any fashion from moving forward with that new  
16 sanctuary?

17 A. My initial plan of a 1,200 seat auditorium they  
18 shot down. When I came back with this auditorium, they  
19 immediately approved it.

20 Q. Do you recall why the 1,200 person auditorium was  
21 shot down, as you described it?

22 A. Two reasons. One was parking. The  
23 neighborhood couldn't accommodate the parking. Two,  
24 where I envisioned the sanctuary sitting would have been  
25 up against the houses, and the neighbors weren't in

1 favor of that.

2 Q. Ultimately did you think you got fair treatment  
3 in the approval of your CUP in 2003 by the City?

4 A. Yes, my second request for this particular  
5 building. We downsized the square footage of the  
6 sanctuary so we wouldn't need as many parking places,  
7 and we moved the building towards the freeway instead of  
8 the houses. So they were very accommodating of that.

9 Q. Now, we talked a little bit last time about the  
10 numbers of folks that attend services. Those gold sheets  
11 -- in your mind, do those gold sheets represent membership  
12 numbers or is that a separate issue or separate records  
13 that are kept in that regard?

14 A. Separate.

15 Q. All right. And how are the membership figures  
16 kept? Are they on a particular document?

17 A. I believe so. My secretary keeps all of that.  
18 We don't make a real big push for church membership.

19 Q. Is there a particular requirement of what you  
20 have to do to be a member of Faith Fellowship?

21 A. Yes.

22 Q. And what is that?

23 A. You have to be nine years old. You have to be  
24 a born-again believer in the Lord Jesus Christ and  
25 preferably baptized in water.

1 play here?

2 A. Yeah. We believe the City is violating the  
3 law.

4 MS. FOX: All right. I have no further  
5 questions.

6 THE REPORTER: Counsel, are you ordering a  
7 copy?

8 MR. SNIDER: Yes.

9 THE REPORTER: Thank you.

10 (The deposition was concluded at 12:10 p.m.)

11  
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GARY MORTARA  
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1 CERTIFICATE OF REPORTER

2

3 I, LORI A. YOCK, CSR No. 5801, a Certified

4 Shorthand Reporter in and for the State of California,

5 do hereby certify:

6 That prior to being examined, the witness named

7 in the foregoing deposition was by me duly sworn to

8 testify to the truth, the whole truth, and nothing but

9 the truth.

10 That said deposition was taken before me at the

11 time and place set forth and was taken down by me in

12 shorthand and thereafter reduced to computerized

13 transcription under my direction and supervision, and I

14 hereby certify the foregoing deposition is a full, true

15 and correct transcript of my shorthand notes so taken.

16 And I further certify that I am neither counsel

17 for nor related to any party to said action nor in any

18 way interested in the outcome thereof.

19 IN WITNESS WHEREOF, I have hereunto subscribed

20 my name this 18th day of June, 2008.

21

22 

23 LORI A. YOCK

24 CSR No. 5801

25

**EXHIBIT 36**



CALIFORNIA  
ASSOCIATION  
OF REALTORS®

**COMMERCIAL PROPERTY PURCHASE AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS**  
(NON-RESIDENTIAL)  
(C.A.R. Form CPA, Revised 10/02)

is March 24, 2006, at San Leandro, California.

**OFFER:**

A. THIS IS AN OFFER FROM San Leandro Fourmians #2 ("Buyer").  
☐ Individual(s), ☒ A Corporation, ☐ A Partnership, ☐ An LLC, ☐ An LLP, or ☐ Other

B. THE REAL PROPERTY TO BE ACQUIRED is described as 14600 Catline  
Assessor's Parcel No. 0806-0933-020, 021 & 022-001, situated in  
San Leandro, County of Alameda, California, ("Property").

C. THE PURCHASE PRICE offered is Five Million Two Hundred Fifty Thousand  
Dollars \$ 5,250,000.00

D. CLOSE OF ESCROW shall occur on \_\_\_\_\_ (date) (or ☒ 120 Days After Acceptance).  
FINANCE TERMS: Obtaining the loans below is a contingency of this Agreement unless: (i) either 2L or 2M is checked below; or (ii) otherwise agreed in writing. Buyer shall act diligently and in good faith to obtain the designated loans. Obtaining deposit, down payment and closing costs is not a contingency. Buyer represents that funds will be good when deposited with Escrow Holder.

A. INITIAL DEPOSIT: Buyer has given a deposit in the amount of \$ 50,000.00  
to the agent submitting the offer (or to ☐ \_\_\_\_\_), by Personal Check  
(or ☐ \_\_\_\_\_), made payable to Old Republic Title Company,  
which shall be held uncashed until Acceptance and then deposited within 3 business days after Acceptance  
or ☒ \_\_\_\_\_, with  
Escrow Holder, or ☐ into Broker's trust account.

B. INCREASED DEPOSIT: Buyer shall deposit with Escrow Holder an increased deposit in the amount of \$ \_\_\_\_\_  
within \_\_\_\_\_ Days After Acceptance, or ☐ \_\_\_\_\_.

C. FIRST LOAN IN THE AMOUNT OF \$ 3,675,000.00  
NEW First Deed of Trust in favor of ☒ Lender, ☐ Seller,

OR ☐ ASSUMPTION of (or ☐ "subject to") Existing First Deed of Trust  
encumbering the Property, securing a note payable at maximum interest of 7.000 % fixed rate, or  
\_\_\_\_\_ % initial adjustable rate with a maximum interest rate of \_\_\_\_\_ %, balance due in  
25 years, amortized over 25 years. (If checked: ☐ and with a margin not to exceed \_\_\_\_\_ %.  
Tied to the following index: \_\_\_\_\_.) Buyer shall pay loan fees/points not to exceed \_\_\_\_\_.  
Additional terms \_\_\_\_\_

D. SECOND LOAN IN THE AMOUNT OF \$ \_\_\_\_\_  
NEW Second Deed of Trust in favor of ☐ Lender, ☐ Seller,

OR ☐ ASSUMPTION of (or ☐ "subject to") Existing Second Deed of Trust  
encumbering the Property, securing a note payable at maximum interest of \_\_\_\_\_ % fixed rate, or  
\_\_\_\_\_ % initial adjustable rate with a maximum interest rate of \_\_\_\_\_ %, balance due in  
\_\_\_\_\_ years, amortized over \_\_\_\_\_ years. (If checked: ☐ and with a margin not to exceed \_\_\_\_\_ %.  
Tied to the following index: \_\_\_\_\_.) Buyer shall pay loan fees/points not to exceed \_\_\_\_\_.  
Additional terms \_\_\_\_\_

E. ADDITIONAL FINANCING TERMS: \$ \_\_\_\_\_

F. BALANCE OF PURCHASE PRICE (not including costs of obtaining loans and other closing costs) in the amount of \$ 1,525,000.00  
to be deposited with Escrow Holder within sufficient time to close escrow.

G. PURCHASE PRICE (TOTAL): \$ 5,250,000.00

H. LOAN APPLICATIONS: Within 7 (or ☒ 21) Days After Acceptance, Buyer shall provide Seller a letter from lender or mortgage loan  
broker stating that, based on a review of Buyer's written application and credit report, Buyer is prequalified or preapproved for any NEW loan  
specified above.

I. VERIFICATION OF DOWN PAYMENT AND CLOSING COSTS: Buyer (or Buyer's lender or loan broker pursuant to 2H) shall, within  
7 (or ☐ 21) Days After Acceptance, provide Seller written verification of Buyer's down payment and closing costs.

J. LOAN CONTINGENCY REMOVAL: (i) Within 17 (or ☐ \_\_\_\_\_) Days After Acceptance Buyer shall, as specified in paragraph 17, remove  
the loan contingency or cancel this Agreement; OR (ii) (if checked) ☒ loan contingency shall remain in effect until the designated loans are  
funded.

K. APPRAISAL CONTINGENCY AND REMOVAL: This Agreement is (OR, if checked, ☐ is NOT) contingent upon the Property appraising at no  
less than the specified purchase price. If there is a loan contingency, at the time the loan contingency is removed (or, if checked, ☐ within 17 (or  
\_\_\_\_\_ ) Days After Acceptance), Buyer shall, as specified in paragraph 17, remove the appraisal contingency or cancel this Agreement. If there  
is no loan contingency, Buyer shall, as specified in paragraph 17, remove the appraisal contingency within 17 (or \_\_\_\_\_ ) Days After Acceptance.

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CPA REVISED 10/02 (PAGE 1 OF 10)

Buyer's Initials ( CM ) ( \_\_\_\_\_ )  
Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



**COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 1 OF 10)**

Agent: C. Edward Bullock Phone: (510) 918-4100 Fax: (510) 881-8301 Prepared using WINForm® software  
Broker: Danville Realty Corporation 21736 Hesperian Boulevard, Hayward CA 94541-7003

14600 Catlina

Property Address: San Leandro, CA

Date: March 24, 2006

- L. ☐ **NO LOAN CONTINGENCY** (if checked): Obtaining any loan in paragraphs 2C, 2D, 2E or elsewhere in this Agreement, is NOT a contingency of this Agreement. If Buyer does not obtain the loan and as a result Buyer does not purchase the Property, Seller may be entitled to Buyer's deposit or other legal remedies.
- M. ☐ **ALL CASH OFFER** (if checked): No loan is needed to purchase the Property. Buyer shall, within 7 (or ☐ \_\_\_\_\_) Days After Acceptance, provide Seller written verification of sufficient funds to close this transaction.
- N. **SELLER FINANCING**: For any Seller financing designated above, Buyer is to execute a note secured by a deed of trust in favor of Seller, on the terms and conditions set forth in the attached addendum (C.A.R. Form SFA).
- O. **ASSUMED OR "SUBJECT TO" FINANCING**: Seller represents that Seller is not delinquent on any payments due on any loans. Seller shall, within the time specified in paragraph 17, provide Copies of all applicable notes and deeds of trust, loan balances and current interest rates to Buyer. Buyer shall then, as specified in paragraph 17, remove this contingency or cancel this Agreement. Differences between estimated and actual loan balances shall be adjusted at Close Of Escrow by cash down payment, impound accounts, if any, shall be assigned and charged to Buyer and credited to Seller. Seller is advised that Buyer's assumption of an existing loan may not release Seller from liability on that loan. If the Property is acquired subject to an existing loan, Buyer and Seller are advised to consult with legal counsel regarding the ability of an existing lender to call the loan due, and the consequences thereof.

**CLOSING AND OCCUPANCY:**

- A. **Seller-Occupied or Vacant Units**: Occupancy shall be delivered to Buyer at 11:59 ☒ AM ☐ PM, ☐ on the date of Close Of Escrow; ☐ on \_\_\_\_\_; or ☐ no later than \_\_\_\_\_ Days After Close Of Escrow. (C.A.R. Form PAA paragraph 2.) If transfer of title and occupancy do not occur at the same time, Buyer and Seller are advised to: (i) enter into a written occupancy agreement; and (ii) consult with their insurance and legal advisors.
- B. **Tenant-Occupied Units**: Possession and occupancy subject to the rights of tenants under existing leases, shall be delivered to Buyer on Close Of Escrow.
- C. At Close Of Escrow, Seller assigns to Buyer any assignable warranty rights for items included in the sale and shall provide any available Copies of such warranties. Brokers cannot and will not determine the assignability of any warranties.
- D. At Close Of Escrow, unless otherwise agreed in writing, Seller shall provide keys and/or means to operate all locks, mailboxes, security systems, alarms and garage door openers. If the Property is a unit in a condominium or located in a common-interest subdivision, Buyer may be required to pay a deposit to the Owners' Association ("OA") to obtain keys to accessible OA facilities.
- I. **SECURITY DEPOSITS**: Security deposits, if any, to the extent they have not been applied by Seller in accordance with any rental agreement and current Law, shall be transferred to Buyer on Close Of Escrow. Seller shall notify each tenant, in compliance with the Civil Code.
- J. **ALLOCATION OF COSTS** (if checked): Unless otherwise specified here, this paragraph only determines who is to pay for the report, inspection, test or service mentioned. If not specified here or elsewhere in this Agreement, the determination of who is to pay for any work recommended or identified by any such report, inspection, test or service is by the method specified in paragraph 17.

**A. INSPECTIONS AND REPORTS:**

- (1) ☐ Buyer ☐ Seller shall pay for sewer connection, if required by Law prior to Close Of Escrow \_\_\_\_\_
- (2) ☐ Buyer ☐ Seller shall pay to have septic or private sewage disposal system inspected \_\_\_\_\_
- (3) ☐ Buyer ☐ Seller shall pay to have domestic wells tested for water potability and productivity \_\_\_\_\_
- (4) ☐ Buyer ☒ Seller shall pay for a natural hazard zone disclosure report prepared by \_\_\_\_\_
- (5) ☐ Buyer ☐ Seller shall pay for the following inspection or report \_\_\_\_\_
- (6) ☐ Buyer ☐ Seller shall pay for the following inspection or report \_\_\_\_\_

**B. GOVERNMENT REQUIREMENTS AND RETROFIT:**

- (1) ☐ Buyer ☒ Seller shall pay for smoke detector installation and/or water heater bracing, if required by Law. Prior to Close Of Escrow, Seller shall provide Buyer a written statement of compliance in accordance with state and local Law, unless exempt.
- (2) ☐ Buyer ☒ Seller shall pay the cost of compliance with any other minimum mandatory government retrofit standards, inspections and reports if required as a condition of closing escrow under any Law.
- (3) ☐ Buyer ☒ Seller shall pay for installation of approved fire extinguisher(s), sprinkler(s), and hose(s), if required by Law, which shall be installed prior to Close Of Escrow. Prior to Close Of Escrow Seller shall provide Buyer a written statement of compliance, if required by Law.

**C. ESCROW AND TITLE:**

- (1) ☒ Buyer ☒ Seller shall pay escrow fee 50% Buyer/50% Seller  
Escrow Holder shall be Old Republic Title Company
- (2) ☒ Buyer ☐ Seller shall pay for owner's title insurance policy specified in paragraph 16 \_\_\_\_\_  
Owner's title policy to be issued by Old Republic Title Company  
(Buyer shall pay for any title insurance policy insuring Buyer's lender, unless otherwise agreed in writing.)

**D. OTHER COSTS:**

- (1) ☐ Buyer ☒ Seller shall pay County transfer tax or transfer fee \_\_\_\_\_
- (2) ☒ Buyer ☒ Seller shall pay City transfer tax or transfer fee 50% Buyer/50% Seller
- (3) ☐ Buyer ☒ Seller shall pay OA transfer fees \_\_\_\_\_
- (4) ☐ Buyer ☒ Seller shall pay OA document preparation fees \_\_\_\_\_
- (5) ☐ Buyer ☐ Seller shall pay for \_\_\_\_\_
- (6) ☐ Buyer ☐ Seller shall pay for \_\_\_\_\_

Buyer's Initials ( GM ) ( \_\_\_\_\_ )  
Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_





Property Address: San Leandro, CA

Date: March 24, 2006

**6. SELLER DISCLOSURES:**

**A. NATURAL AND ENVIRONMENTAL DISCLOSURES:** Seller shall, within the time specified in paragraph 17, if required by Law: (i) deliver to Buyer earthquake guides (and questionnaire) and environmental hazards booklet; (ii) even if exempt from the obligation to provide an NHD, disclose if the Property is located in a Special Flood Hazard Area; Potential Flooding (Inundation) Area; Very High Fire Hazard Zone; State Fire Responsibility Area; Earthquake Fault Zone; Seismic Hazard Zone; and (iii) disclose any other zone as required by Law and provide any other information required for those zones.

**B. ADDITIONAL DISCLOSURES:** Within the time specified in paragraph 17, Seller shall provide to Buyer, in writing, the following disclosures, documentation and information:

(1) **RENTAL SERVICE AGREEMENTS:** (i) All current leases, rental agreements, service contracts, and other agreements pertaining to the operation of the Property; and (ii) a rental statement including names of tenants, rental rates, period of rental, date of last rent increase, security deposits, rental concessions, rebates, or other benefits, if any, and a list of delinquent rents and their duration. Seller represents that no tenant is entitled to any concession, rebate, or other benefit, except as set forth in these documents.

(2) **INCOME AND EXPENSE STATEMENTS:** The books and records, including a statement of income and expense for the 12 months preceding Acceptance. Seller represents that the books and records are those maintained in the ordinary and normal course of business, and used by Seller in the computation of federal and state income tax returns.

(3) ☐ **TENANT ESTOPPEL CERTIFICATES:** (If checked) Tenant estoppel certificates (C.A.R. Form TEC) completed by Seller or Seller's agent, and signed by tenants, acknowledging: (i) that tenants' rental or lease agreements are unmodified and in full force and effect (or if modified, stating all such modifications); (ii) that no lessor defaults exist; and (iii) stating the amount of any prepaid rent or security deposit.

(4) **SURVEYS, PLANS AND ENGINEERING DOCUMENTS:** Copies of surveys, plans, specifications and engineering documents, if any, in Seller's possession or control.

(5) **PERMITS:** If in Seller's possession, Copies of all permits and approvals concerning the Property, obtained from any governmental entity, including, but not limited to, certificates of occupancy, conditional use permits, development plans, and licenses and permits pertaining to the operation of the Property.

(6) **STRUCTURAL MODIFICATIONS:** Any known structural additions or alterations to, or the installation, alteration, repair or replacement of, significant components of the structure(s) upon the Property.

(7) **GOVERNMENTAL COMPLIANCE:** Any improvements, additions, alterations or repairs made by Seller, or known to Seller to have been made, without required governmental permits, final inspections, and approvals.

(8) **VIOLATION NOTICES:** Any notice of violations of any Law filed or issued against the Property and actually known to Seller.

(9) **MISCELLANEOUS ITEMS:** Any of the following, if actually known to Seller: (i) any current pending lawsuit(s), investigation(s), inquiry(ies), action(s), or other proceeding(s) affecting the Property, or the right to use and occupy it; (ii) any unsatisfied mechanic's or materialman's lien(s) affecting the Property; and (iii) that any tenant of the Property is the subject of a bankruptcy.

7. ☒ **ENVIRONMENTAL SURVEY** (if checked): Within \_\_\_\_\_ Days After Acceptance, Buyer shall be provided a phase one environmental survey report paid for and obtained by ☐ Buyer ☐ Seller. Buyer shall then, as specified in paragraph 17, remove this contingency or cancel this Agreement.

**8. CONDOMINIUM/PLANNED UNIT DEVELOPMENT DISCLOSURES:**

**A. SELLER HAS:** 7 (or ☐ \_\_\_\_\_) Days After Acceptance to disclose to Buyer whether the Property is a condominium, or located in a planned unit development or other common interest subdivision.

**B. If Property is a condominium, or located in a planned unit development or other common interest subdivision, Seller has 3 (or ☐ \_\_\_\_\_) Days After Acceptance to request from the OA (C.A.R. Form HOA):** (i) Copies of any documents required by Law; (ii) disclosure of any pending or anticipated claim or litigation by or against the OA; (iii) a statement containing the location and number of designated parking and storage spaces; (iv) Copies of the most recent 12 months of OA minutes for regular and special meetings; and (v) the names and contact information of all OA's governing the Property. (Collectively, "CI Disclosures.") Seller shall itemize and deliver to Buyer all CI Disclosures received from the OA and any CI Disclosures in Seller's possession. Buyer's approval of CI Disclosures is a contingency of this Agreement as specified in paragraph 17.

9. **SUBSEQUENT DISCLOSURES:** In the event Seller, prior to Close Of Escrow, becomes aware of adverse conditions materially affecting the Property, or any material inaccuracy in disclosures, information or representations previously provided to Buyer of which Buyer is otherwise unaware, Seller shall promptly provide a subsequent or amended disclosure or notice in writing, covering those items. However, a subsequent or amended disclosure shall not be required for conditions and material inaccuracies disclosed in reports ordered and paid for by Buyer.

**10. CHANGES DURING ESCROW:**

**A. Prior to Close Of Escrow, Seller may only engage in the following acts, ("Proposed Changes"), subject to Buyer's rights in paragraph 17:** (i) rent or lease any vacant unit or other part of the premises; (ii) alter, modify, or extend any existing rental or lease agreement; (iii) enter into, alter, modify or extend any service contract(s); or (iv) change the status of the condition of the Property.

**B. At least 7 (or ☒ 15) Days prior to any Proposed Changes, Seller shall give written notice to Buyer of any Proposed Changes.**

**11. CONDITIONS AFFECTING PROPERTY:**

**A. Unless otherwise agreed:** (i) the Property is sold (a) in its PRESENT physical condition as of the date of Acceptance and (b) subject to Buyer's investigation rights; (ii) the Property, including pool, spa, landscaping and grounds, is to be maintained in substantially the same condition as on the date of Acceptance; and (iii) all debts and personal property not included in the sale shall be removed by Close Of Escrow.

**B. SELLER SHALL, within the time specified in paragraph 17, DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property, including known insurance claims within the past five years, AND MAKE OTHER DISCLOSURES REQUIRED BY LAW.**

Buyer's Initials ( Gm ) ( \_\_\_\_\_ )  
Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



14600 Catlina  
Property Address: San Leandro, CA

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- C. **NOTE TO BUYER:** You are strongly advised to conduct investigations of the entire Property in order to determine its present condition since Seller may not be aware of all defects affecting the Property or other factors that you consider important. Property improvements may not be built according to code, in compliance with current Law, or have had permits issued.
- D. **NOTE TO SELLER:** Buyer has the right to inspect the Property and, as specified in paragraph 17, based upon information discovered in those inspections: (i) cancel this Agreement; or (ii) request that you make Repairs or take other action.
- 12. ITEMS INCLUDED AND EXCLUDED:**
- A. **NOTE TO BUYER AND SELLER:** Items listed as included or excluded in the MLS, flyers or marketing materials are not included in the purchase price or excluded from the sale unless specified in 12B or C.
- B. **ITEMS INCLUDED IN SALE:**
- (1) All EXISTING fixtures and fittings that are attached to the Property.
  - (2) Existing electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fans, fireplace inserts, gas logs and grates, solar systems, built-in appliances, window and door screens, awnings, shutters, window coverings, attached floor coverings, television antennas, satellite dishes, private integrated telephone systems, air coolers/conditioners, pool/spa equipment, garage door openers/remote controls, mailbox, in-ground landscaping, trees/shrubs, water softeners, water purifiers, security systems/alarms.
  - (3) A complete inventory of all personal property of Seller currently used in the operation of the Property and included in the purchase price shall be delivered to Buyer within the time specified in paragraph 17.
  - (4) Seller represents that all items included in the purchase price are, unless otherwise specified, owned by Seller. Within the time specified in paragraph 17, Seller shall give Buyer a list of fixtures not owned by Seller.
  - (5) Seller shall deliver title to the personal property by Bill of Sale, free of all liens and encumbrances, and without warranty of condition.
  - (6) As additional security for any note in favor of Seller for any part of the purchase price, Buyer shall execute a UCC-1 Financing Statement to be filed with the Secretary of State, covering the personal property included in the purchase, replacement thereof, and insurance proceeds.
- C. **ITEMS EXCLUDED FROM SALE:**
- 13. BUYER'S INVESTIGATION OF PROPERTY AND MATTERS AFFECTING PROPERTY:**
- A. Buyer's acceptance of the condition of, and any other matter affecting the Property is a contingency of this Agreement, as specified in this paragraph and paragraph 17. Within the time specified in paragraph 17, Buyer shall have the right, at Buyer's expense unless otherwise agreed, to conduct inspections, investigations, tests, surveys and other studies ("Buyer Investigations"), including, but not limited to, the right to: (i) inspect for lead-based paint and other lead-based paint hazards; (ii) inspect for wood destroying pests and organisms; (iii) confirm the insurability of Buyer and the Property; and (iv) satisfy Buyer as to any matter of concern to Buyer. Without Seller's prior written consent, Buyer shall neither make nor cause to be made: (i) invasive or destructive Buyer Investigations; or (ii) inspections by any governmental building or zoning inspector, or government employee, unless required by Law.
- B. Buyer shall complete Buyer Investigations and, as specified in paragraph 17, remove the contingency or cancel this Agreement. Buyer shall give Seller, at no cost, complete Copies of all Buyer Investigation reports obtained by Buyer. Seller shall make Property available for all Buyer Investigations. Seller shall have water, gas, electricity, and all operable pilot lights on for Buyer's Investigations and through the date possession is made available to Buyer.
- 14. REPAIRS:** Repairs shall be completed prior to final verification of condition unless otherwise agreed in writing. Repairs to be performed at Seller's expense may be performed by Seller or through others, provided that the work complies with applicable Law, including governmental permit, inspection and approval requirements. Repairs shall be performed in a good, skillful manner with materials of quality and appearance comparable to existing materials. It is understood that exact restoration of appearance or cosmetic items following all Repairs may not be possible. Seller shall: (i) obtain receipts for Repairs performed by others; (ii) prepare a written statement indicating the Repairs performed by Seller and the date of such Repairs; and (iii) provide Copies of receipts and statements to Buyer prior to final verification of condition.
- 15. BUYER INDEMNITY AND SELLER PROTECTION FOR ENTRY UPON PROPERTY:** Buyer shall: (i) keep the Property free and clear of liens; (ii) Repair all damage arising from Buyer Investigations; and (iii) Indemnify and hold Seller harmless from all resulting liability, claims, demands, damages and costs. Buyer shall carry, or Buyer shall require anyone acting on Buyer's behalf to carry policies of liability, workers' compensation and other applicable insurance, defending and protecting Seller from liability for any injuries to persons or property occurring during any Buyer Investigations or work done on the Property at Buyer's direction prior to Close Of Escrow. Seller is advised that certain protections may be afforded Seller by recording a "Notice of Non-Responsibility" (C.A.R. Form NNR) for Buyer Investigations and work done on the Property at Buyer's direction. Buyer's obligations under this paragraph shall survive the termination of this Agreement.
- 16. TITLE AND VESTING:**
- A. Within the time specified in paragraph 17, Buyer shall be provided a current preliminary (title) report, which is only an offer by the title insurer to issue a policy of title insurance and may not contain every item affecting title. Buyer's review of the preliminary report and any other matters which may affect title are a contingency of this Agreement as specified in paragraph 17.
- B. Title is taken in its present condition subject to all encumbrances, easements, covenants, conditions, restrictions, rights and other matters, whether of record or not, as of the date of Acceptance except (i) monetary liens of record unless Buyer is assuming those obligations or taking the property subject to those obligations; and (ii) those matters which Seller has agreed to remove in writing.
- C. Within the time specified in paragraph 17, Seller has a duty to disclose to Buyer all matters known to Seller affecting title, whether of record or not.

Buyer's Initials ( GM ) (        )  
Seller's Initials (        ) (        )

Reviewed by                      Date           



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- D. At Close Of Escrow, Buyer shall receive a grant deed conveying title (or, for stock cooperative or long-term lease, an assignment of stock certificate or of Seller's leasehold interest), including oil, mineral and water rights if currently owned by Seller. Title shall vest as designated in Buyer's supplemental escrow instructions. THE MANNER OF TAKING TITLE MAY HAVE SIGNIFICANT LEGAL AND TAX CONSEQUENCES. CONSULT AN APPROPRIATE PROFESSIONAL.
- E. Buyer shall receive a standard coverage owner's CLTA policy of title insurance. An ALTA policy or the addition of endorsements may provide greater coverage for Buyer. A title company, at Buyer's request, can provide information about the availability, desirability, coverage, and cost of various title insurance coverages and endorsements. If Buyer desires title coverage other than that required by this paragraph, Buyer shall instruct Escrow Holder in writing and pay any increase in cost.
17. TIME PERIODS; REMOVAL OF CONTINGENCIES; CANCELLATION RIGHTS: The following time periods may only be extended, altered, modified or changed by mutual written agreement. Any removal of contingencies or cancellation under this paragraph must be in writing (C.A.R. Form CR).
- A. SELLER HAS: 7 (or ☒ 14) Days After Acceptance to deliver to Buyer all reports, disclosures and information for which Seller is responsible under paragraphs 5, 6A and B, 8A, 11B, 12B (3) and (4) and 16.
- B. BUYER HAS: 17 (or ☒ 24) Days After Acceptance, unless otherwise agreed in writing, to:
- (1) Complete all Buyer Investigations; approve all disclosures, reports and other applicable information, which Buyer receives from Seller; and approve all matters affecting the Property (including lead-based paint and lead-based paint hazards as well as other information specified in paragraph 6 and Insurability of Buyer and the Property).
  - (2) Within the time specified in 17B(1), Buyer may request that Seller make repairs or take any other action regarding the Property (C.A.R. Form RR). Seller has no obligation to agree to or respond to Buyer's requests.
  - (3) By the end of the time specified in 17B(1) (or 2J for loan contingency or 2K for appraisal contingency), Buyer shall remove, in writing, the applicable contingency (C.A.R. Form CR) or cancel this Agreement. However, if the following inspections, reports or disclosures are not made within the time specified in 17A, then Buyer has 5 (or ☒ 15) Days after receipt of any such items, or the time specified in, whichever is later, to remove the applicable contingency or cancel this Agreement in writing: (i) government-mandated inspections or reports required as a condition of closing; (ii) Common Interest Disclosures pursuant to paragraph 8B; (iii) a subsequent or amended disclosure pursuant to paragraph 9; (iv) Proposed Changes pursuant to paragraph 10B; and (v) environmental survey pursuant to paragraph 7.
- C. CONTINUATION OF CONTINGENCY OR CONTRACTUAL OBLIGATION; SELLER RIGHT TO CANCEL:
- (1) Seller right to Cancel: Buyer Contingencies: Seller, after first giving Buyer a Notice to Buyer to Perform (as specified below), may cancel this Agreement in writing and authorize return of Buyer's deposit if, by the time specified in the Agreement, Buyer does not remove in writing the applicable contingency or cancel this Agreement. Once all contingencies have been removed, failure of either Buyer or Seller to close escrow in time may be a breach of this Agreement.
  - (2) Continuation of Contingency: Even after the expiration of the time specified in 17B, Buyer retains the right to make requests to Seller, remove in writing the applicable contingency or cancel this Agreement until Seller cancels pursuant to 17C(1). Once Seller receives Buyer's written removal of all contingencies, Seller may not cancel this Agreement pursuant to 17C(1).
  - (3) Seller right to Cancel: Buyer Contract Obligations: Seller, after first giving Buyer a Notice to Buyer to Perform (as specified below), may cancel this Agreement in writing and authorize return of Buyer's deposit for any of the following reasons: (i) if Buyer fails to deposit funds as required by 2A or 2B; (ii) if the funds deposited pursuant to 2A or 2B are not good when deposited; (iii) if Buyer fails to provide a letter as required by 2H; (iv) if Buyer fails to provide verification as required by 2I or 2M; (v) if Seller reasonably disapproves of the verification provided by 2I or 2M. Seller is not required to give Buyer a Notice to Perform regarding Close Of Escrow.
  - (4) Notice To Buyer To Perform: The Notice to Buyer to Perform (C.A.R. Form NBP) shall (i) be in writing; (ii) be signed by Seller; and (iii) give Buyer at least 24 (or ☒ 72) hours (or until the time specified in the applicable paragraph, whichever occurs last) to take the applicable action. A Notice to Buyer to Perform may not be given any earlier than 2 Days Prior to the expiration of the applicable time for Buyer to remove a contingency or cancel the Agreement or meet a 17C(3) obligation.
- D. EFFECT OF BUYER'S REMOVAL OF CONTINGENCIES: If Buyer removes, in writing, any contingency or cancellation rights, unless otherwise specified in a separate written agreement between Buyer and Seller, Buyer shall conclusively be deemed to have: (i) completed all Buyer Investigations, and review of reports and other applicable information and disclosures pertaining to that contingency or cancellation right; (ii) elected to proceed with the transaction; and (iii) assumed all liability, responsibility, and expense for Repairs or corrections pertaining to that contingency or cancellation right, or for inability to obtain financing.
- E. EFFECT OF CANCELLATION ON DEPOSITS: If Buyer or Seller gives written notice of cancellation pursuant to rights duly exercised under the terms of this Agreement, Buyer and Seller agree to Sign mutual instructions to cancel the sale and escrow and release deposits, less fees and costs, to the party entitled to the funds. Fees and costs may be payable to service providers and vendors for services and products provided during escrow. Release of funds will require mutual Signed release instructions from Buyer and Seller, judicial decision or arbitration award.

Buyer's Initials ( Cym ) ( \_\_\_\_\_ )  
Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_





14600 Catina

Property Address: San Leandro, CADate: March 24, 2006

18. **FINAL VERIFICATION OF CONDITION:** Buyer shall have the right to make a final inspection of the Property within 5 (or ☐ \_\_\_\_\_) Days Prior to Close Of Escrow, NOT AS A CONTINGENCY OF THE SALE, but solely to confirm: (i) the Property is maintained pursuant to paragraph 11A; (ii) Repairs have been completed as agreed; and (iii) Seller has complied with Seller's other obligations under this Agreement.
19. **ENVIRONMENTAL HAZARD CONSULTATION:** Buyer and Seller acknowledge: (i) Federal, state, and local legislation impose liability upon existing and former owners and users of real property, in applicable situations, for certain legislatively defined, environmentally hazardous substances; (ii) Broker(s) has/have made no representation concerning the applicability of any such Law to this transaction or to Buyer or to Seller, except as otherwise indicated in this Agreement; (iii) Broker(s) has/have made no representation concerning the existence, testing, discovery, location and evaluation of, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property; and (iv) Buyer and Seller are each advised to consult with technical and legal experts concerning the existence, testing, discovery, location and evaluation of, and risks posed by, environmentally hazardous substances, if any, located on or potentially affecting the Property.
20. **AMERICANS WITH DISABILITIES ACT:** The Americans With Disabilities Act ("ADA") prohibits discrimination against individuals with disabilities. The ADA affects almost all commercial facilities and public accommodations. The ADA can require, among other things, that buildings be made readily accessible to the disabled. Different requirements apply to new construction, alterations to existing buildings, and removal of barriers in existing buildings. Compliance with the ADA may require significant costs. Monetary and injunctive remedies may be incurred if the Property is not in compliance. A real estate broker does not have the technical expertise to determine whether a building is in compliance with ADA requirements, or to advise a principal on those requirements. Buyer and Seller are advised to contact an attorney, contractor, architect, engineer or other qualified professional of Buyer's or Seller's own choosing to determine to what degree, if any, the ADA impacts that principal or this transaction.
21. **LIQUIDATED DAMAGES:** If Buyer fails to complete this purchase because of Buyer's default, Seller shall retain, as liquidated damages, the deposit actually paid. Buyer and Seller agree that this amount is a reasonable sum given that it is impractical or extremely difficult to establish the amount of damages that would actually be suffered by Seller in the event Buyer were to breach this Agreement. Release of funds will require mutual, Signed release instructions from both Buyer and Seller, judicial decision or arbitration award.

Buyer's Initials GMSeller's Initials I**22. DISPUTE RESOLUTION:**

- A. **MEDIATION:** Buyer and Seller agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction, before resorting to arbitration or court action. Paragraphs 22B(2) and (3) below apply to mediation whether or not the Arbitration provision is initiated. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.
- B. **ARBITRATION OF DISPUTES:** (1) Buyer and Seller agree that any dispute or claim in Law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration, including and subject to paragraphs 22B(2) and (3) below. The arbitrator shall be a retired judge or justice, or an attorney with at least 5 years of real estate transactional Law experience, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California Law. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05. In all other respects, the arbitration shall be conducted in accordance with Title 9 of Part II of the California Code of Civil Procedure. Judgment upon the award of the arbitrator(s) may be entered into any court having jurisdiction. Interpretation of this agreement to arbitrate shall be governed by the Federal Arbitration Act.
- (2) **EXCLUSIONS FROM MEDIATION AND ARBITRATION:** The following matters are excluded from mediation and arbitration: (i) a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or installment land sale contract as defined in Civil Code §2985; (ii) an unlawful detainer action; (iii) the filing or enforcement of a mechanic's lien; and (iv) any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the mediation and arbitration provisions.
- (3) **BROKERS:** Buyer and Seller agree to mediate and arbitrate disputes or claims involving either or both Brokers, consistent with 22A and B, provided either or both Brokers shall have agreed to such mediation or arbitration prior to, or within a reasonable time after, the dispute or claim is presented to Brokers. Any election by either or both Brokers to participate in mediation or arbitration shall not result in Brokers being deemed parties to the Agreement.

"NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY."

"WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION."

Buyer's initials GMSeller's initials I

Buyer's Initials ( ) ( )

Seller's Initials ( ) ( )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



**24600 Catlina**

Property Address: SAN LEANDRO, CA

Date: March 24, 2006

- Date: March 24, 2006
23. **ASSIGNMENT:** Buyer shall not assign all or any part of Buyer's interests in this Agreement without first having obtained the written consent of Seller. Such consent shall not be unreasonably withheld, unless otherwise agreed in writing. Any total or partial assignment shall not relieve Buyer of Buyer's obligations pursuant to this Agreement.
24. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon, and inure to the benefit of, Buyer and Seller and their respective successors and assigns, except as otherwise provided herein.
25. **COPIES:** Seller and Buyer each represent that Copies of all reports, documents, certificates, approvals and other documents that are furnished to the other are true, correct and unaltered Copies of the original documents, if the originals are in the possession of the furnishing party.
26. **NOTICES:** Whenever notice is given under this Agreement, each notice shall be in writing, and shall be delivered personally, by facsimile, or by mail, postage prepaid. Notice shall be delivered to the address set forth below the recipient's signature of acceptance. Either party may change its notice address by providing notice to the other party.
27. **AUTHORITY:** Any person or persons signing this Agreement represent(s) that such person has full power and authority to bind that person's principal, and that the designated Buyer and Seller has full authority to enter into and perform this Agreement. Entering into this Agreement, and the completion of the obligations pursuant to this contract, does not violate any Articles of Incorporation, Articles of Organization, ByLaws, Operating Agreement, Partnership Agreement or other document governing the activity of either Buyer or Seller.
28. **GOVERNING LAW:** This Agreement shall be governed by the Laws of the state of California.
29. **PRORATIONS OF PROPERTY TAXES AND OTHER ITEMS:** Unless otherwise agreed in writing, the following items shall be PAID CURRENT and prorated between Buyer and Seller as of Close Of Escrow: real property taxes and assessments, interest, rents, HOA regular, special, and emergency dues and assessments imposed prior to Close Of Escrow, premiums on insurance assumed by Buyer, payments on bonds and assessments assumed by Buyer, and payments on Mello-Roos and other Special Assessment District bonds and assessments that are now a lien. The following items shall be assumed by Buyer WITHOUT CREDIT toward the purchase price: prorated payments on Mello-Roos and other Special Assessment District bonds and assessments and HOA special assessments that are now a lien but not yet due. Property will be reassessed upon change of ownership. Any supplemental tax bills shall be paid as follows: (i) for periods after Close Of Escrow, by Buyer; and (ii) for periods prior to Close Of Escrow, by Seller. TAX BILLS ISSUED AFTER CLOSE OF ESCROW SHALL BE HANDLED DIRECTLY BETWEEN BUYER AND SELLER. Prorations shall be made based on a 30-day month.
30. **WITHHOLDING TAXES:** Seller and Buyer agree to execute any instrument, affidavit, statement or instruction reasonably necessary to comply with federal (FIRPTA) and California withholding Law, if required (C.A.R. Form AS).
31. **MULTIPLE LISTING SERVICE/PROPERTY DATA SYSTEM:** If Broker is a participant of a Multiple Listing Service ("MLS") or Property Data System ("PDS"), Broker is authorized to report to the MLS or PDS a pending sale and, upon Close Of Escrow, the terms of this transaction to be published and disseminated to persons and entities authorized to use the information on terms approved by the MLS or PDS.
32. **EQUAL HOUSING OPPORTUNITY:** The Property is sold in compliance with federal, state and local anti-discrimination Laws.
33. **ATTORNEY FEES:** In any action, proceeding, or arbitration between Buyer and Seller arising out of this Agreement, the prevailing Buyer or Seller shall be entitled to reasonable attorney fees and costs from the non-prevailing Buyer or Seller, except as provided in paragraph 22A.
34. **SELECTION OF SERVICE PROVIDERS:** If Brokers refer Buyer or Seller to persons, vendors, or service or product providers ("Providers"). Brokers do not guarantee the performance of any Providers. Buyer and Seller may select ANY Providers of their own choosing.
35. **TIME OF ESSENCE; ENTIRE CONTRACT; CHANGES:** Time is of the essence. All understandings between the parties are incorporated in this Agreement. Its terms are intended by the parties as a final, complete and exclusive expression of their Agreement with respect to its subject matter, and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. If any provision of this Agreement is held to be ineffective or invalid, the remaining provisions will nevertheless be given full force and effect. Neither this Agreement nor any provision in it may be extended, amended, modified, altered or changed, except in writing Signed by Buyer and Seller.
36. **OTHER TERMS AND CONDITIONS, including attached supplements:**
- A. ☒ Buyer Inspection Advisory (C.A.R. Form BIA)
- B. ☐ Seller Financing Addendum and Disclosure (C.A.R. Form SFA)
- C. ☐ Purchase Agreement Addendum (C.A.R. Form PAA paragraph numbers: )
- D. ☐ Buyer Intent to Exchange Supplement (C.A.R. Form BES)
- E. ☐ Seller Intent to Exchange Supplement (C.A.R. Form SES)
- F. This Agreement is specifically conditioned upon Buyer, in Buyer's sole judgement, determining that the subject real property is suitable for and approved for use as a church. This condition shall remain in full force and effect until removed in writing by Buyer.

(5) This offer is further subject to the approval of the I.C.F.C. Board of Directors.

Buyer's Initials ( GM ) ( \_\_\_\_\_ )  
Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



14500 Catalina

Property Address: San Leandro, CA

Date: March 24, 2005

17. **DEFINITIONS:** As used in this Agreement:
- A. "Acceptance" means the time the offer or final counter offer is accepted in writing by a party and is delivered to and personally received by the other party or that party's authorized agent in accordance with this offer or a final counter offer.
  - B. "Agreement" means the terms and conditions of this accepted Commercial Property Purchase Agreement and any accepted counter offers and addenda.
  - C. "C.A.R. Form" means the specific form referenced, or another comparable form agreed to by the parties.
  - D. "Close Of Escrow" means the date the grant deed, or other evidence of transfer of title, is recorded. If the scheduled close of escrow falls on a Saturday, Sunday or legal holiday, then close of escrow shall be the next business day after the scheduled close of escrow date.
  - E. "Copy" means copy by any means including photocopy, NCR, facsimile and electronic.
  - F. "Days" means calendar days, unless otherwise required by Law.
  - G. "Days After" means the specified number of calendar days after the occurrence of the event specified, not counting the calendar date on which the specified event occurs, and ending at 11:59 PM on the final day.
  - H. "Days Prior" means the specified number of calendar days before the occurrence of the event specified, not counting the calendar date on which the specified event is scheduled to occur.
  - I. "Electronic Copy" or "Electronic Signature" means, as applicable, an electronic copy or signature complying with California Law. Buyer and Seller agree that electronic means will not be used by either one to modify or alter the content or integrity of the Agreement without the knowledge and consent of the other.
  - J. "Law" means any law, code, statute, ordinance, regulation, rule or order, which is adopted by a controlling city, county, state or federal legislative, judicial or executive body or agency.
  - K. "Notice to Buyer to Perform" means a document (C.A.R. Form NBP), which shall be in writing and Signed by Seller and shall give Buyer at least 24 hours (or as otherwise specified in paragraph 17C(4)) to remove a contingency or perform as applicable.
  - L. "Repairs" means any repairs (including pest control), alterations, replacements, modifications and retrofitting of the Property provided for under this Agreement.
  - M. "Signed" means either a handwritten or electronic signature on an original document, Copy or any counterpart.
  - N. Singular and Plural terms each include the other, when appropriate.
38. **BROKERAGE:** Neither Buyer nor Seller has utilized the services of, or for any other reason owes compensation to, a licensed real estate broker (individual or corporate), agent, finder, or other entity, other than as specified in this Agreement, in connection with any act relating to the Property, including, but not limited to, inquiries, introductions, consultations and negotiations leading to this Agreement. Buyer and Seller each agree to indemnify, defend, and hold the other, the Brokers specified herein and their agents, harmless from and against any costs, expenses or liability for compensation claimed inconsistent with the warranty and representations in this paragraph.
39. **AGENCY:**
- A. **POTENTIALLY COMPETING BUYERS AND SELLERS:** Buyer and Seller each acknowledge receipt of a disclosure of the possibility of multiple representation by the Broker representing that principal. This disclosure may be part of a listing agreement, buyer-broker agreement or separate document (C.A.R. Form DA). Buyer understands that Broker representing Buyer may also represent other potential buyers, who may consider, make offers on or ultimately acquire the Property. Seller understands that Broker representing Seller may also represent other sellers with competing properties of interest to this Buyer.
  - B. **CONFIRMATION:** The following agency relationships are hereby confirmed for this transaction:  
 Listing Agent TRI Commercial (Print Firm Name) is the agent of (check one): ☒ the Seller exclusively; or ☐ both the Buyer and Seller.  
 Selling Agent Denville Realty Corporation (Print Firm Name) (if not same as Listing Agent) is the agent of (check one): ☒ the Buyer exclusively; or ☐ the Seller exclusively; or ☐ both the Buyer and Seller.  
 Real Estate Brokers are not parties to the Agreement between Buyer and Seller.
40. **JOINT ESCROW INSTRUCTIONS TO ESCROW HOLDER:**
- A. The following paragraphs, or applicable portions thereof, of this Agreement constitute the joint escrow instructions of Buyer and Seller to Escrow Holder, which Escrow Holder is to use along with any related counter offers and addenda, and any additional mutual instructions to close the escrow: 1, 2, 4, 5, 16, 17E, 29, 30, 35, 36B-F, 37, 40, 42, 45A, 46 and paragraph D of the section titled Real Estate Broker on page 10. If a Copy of the separate compensation agreement(s) provided for in paragraph 42 or 45A, or paragraph D of the section titled Real Estate Broker on page 10 is deposited with Escrow Holder by Broker, Escrow Holder shall accept such agreement(s) and pay out from Buyer's or Seller's funds, or both, as applicable, the Broker's compensation provided for in such agreement(s). The terms and conditions of this Agreement not set forth in the specified paragraphs are additional matters for the information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provisions upon Escrow Holder's request. To the extent the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller will execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close the escrow.

Buyer's Initials ( GM ) ( )  
 Seller's Initials ( ) ( )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_





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Date: March 24, 2006

- B. A Copy of this Agreement shall be delivered to Escrow Holder within 3 business days after Acceptance (or ☐ ). Buyer and Seller authorize Escrow Holder to accept and rely on Copies and Signatures as defined in this Agreement as originals, to open escrow and for other purposes of escrow. The validity of this Agreement as between Buyer and Seller is not affected by whether or when Escrow Holder Signs this Agreement.
- C. Brokers are a party to the Escrow for the sole purpose of compensation pursuant to paragraphs 42, 45A and paragraph D of the section titled Real Estate Broker on page 10. Buyer and Seller irrevocably assign to Brokers compensation specified in paragraphs 42 and 45A, respectively, and irrevocably instruct Escrow Holder to disburse those funds to Brokers at Close Of Escrow, or pursuant to any other mutually executed cancellation agreement. Compensation instructions can be amended or revoked only with the written consent of Brokers. Escrow Holder shall immediately notify Brokers: (i) if Buyer's initial or any additional deposit is not made pursuant to this Agreement, or is not good at time of deposit with Escrow Holder; or (ii) if Buyer and Seller instruct Escrow Holder to cancel escrow.
- D. A Copy of any amendment that affects any paragraph for which Escrow Holder is responsible shall be delivered to Escrow Holder within 2 business days after mutual execution of the amendment.
41. **SCOPE OF BROKER DUTY:** Buyer and Seller acknowledge and agree that: Brokers: (i) do not decide what price Buyer should pay or Seller should accept; (ii) do not guarantee the condition of the Property; (iii) do not guarantee the performance, adequacy or completeness of inspections, services, products or repairs provided or made by Seller or others; (iv) shall not be responsible for identifying defects that are not known to Broker(s); (v) shall not be responsible for inspecting public records or permits concerning the title or use of the Property; (vi) shall not be responsible for identifying location of boundary lines or other items affecting title; (vii) shall not be responsible for verifying square footage, representations of others or information contained in inspection reports, MLS or PDS, advertisements, flyers or other promotional material, unless otherwise agreed in writing; (viii) shall not be responsible for providing legal or tax advice regarding any aspect of a transaction entered into by Buyer or Seller in the course of this representation; and (ix) shall not be responsible for providing other advice or information that exceeds the knowledge, education and experience required to perform real estate licensed activity. Buyer and Seller agree to seek legal, tax, insurance, title and other desired assistance from appropriate professionals.
42. **BROKER COMPENSATION FROM BUYER:** If applicable, upon Close Of Escrow, Buyer agrees to pay compensation to Broker as specified in a separate written agreement between Buyer and Broker.
43. **TERMS AND CONDITIONS OF OFFER:** This is an offer to purchase the Property on the above terms and conditions. All paragraphs with spaces for initials by Buyer and Seller are incorporated in this Agreement only if initialed by all parties. If at least one but not all parties initial, a counter offer is required until agreement is reached. Seller has the right to continue to offer the Property for sale and to accept any other offer at any time prior to notification of Acceptance. Buyer has read and acknowledges receipt of a Copy of the offer and agrees to the above confirmation of agency relationships. If this offer is accepted and Buyer subsequently defaults, Buyer may be responsible for payment of Brokers' compensation. This Agreement and any supplement, addendum or modification, including any Copy, may be Signed in two or more counterparts, all of which shall constitute one and the same writing.
44. **EXPIRATION OF OFFER:** This offer shall be deemed revoked and the deposit shall be returned, unless the offer is Signed by Seller, and a Copy of the Signed offer is personally received by Buyer, or by C. Edward Bullock, who is authorized to receive it by 5:00 PM on the third Day after this offer is signed by Buyer. (OR, if checked ☒ by March 25, 2006 (date), at 11:59 ☐ AM ☒ PM).

Buyer San Leandro Foursquare #2

By [Signature] Date March 24, 2006

Print name Pastor Gary Matos MORTARA (GM)

Address 577 Manor Boulevard City San Leandro State ca Zip 94579

Telephone (510) 773-8513 Fax (510) 614-0668 E-mail returnfaith@vshop.com

Buyer \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_

Print name \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Notice Address, if Different \_\_\_\_\_

Buyer's Initials ( GM ) ( \_\_\_\_\_ )  
Seller's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Property Address: San Leandro, CADate: March 24, 2006**45. BROKER COMPENSATION FROM SELLER:**

A. Upon Close Of Escrow, Seller agrees to pay compensation to Broker as specified in a separate written agreement between Seller and Broker.  
 B. If escrow does not close, compensation is payable as specified in that separate written agreement.

**46. ACCEPTANCE OF OFFER:** Seller warrants that Seller is the owner of the Property, or has the authority to execute this Agreement. Seller accepts the above offer, agrees to sell the Property on the above terms and conditions, and agrees to the above confirmation of agency relationships. Seller has read and acknowledges receipt of a Copy of this Agreement, and authorizes Broker to deliver a Signed Copy to Buyer.

☐ (If checked) SUBJECT TO ATTACHED COUNTER OFFER, DATED \_\_\_\_\_

Seller \_\_\_\_\_  
 By \_\_\_\_\_  
 Print name \_\_\_\_\_ Date \_\_\_\_\_  
 Address \_\_\_\_\_  
 Telephone \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Seller \_\_\_\_\_  
 By \_\_\_\_\_  
 Print name \_\_\_\_\_ Date \_\_\_\_\_  
 Address \_\_\_\_\_  
 Telephone \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Fax \_\_\_\_\_ E-mail \_\_\_\_\_  
 Notice Address, If Different \_\_\_\_\_

(\_\_\_\_\_/\_\_\_\_\_) Confirmation of Acceptance: A Copy of Signed Acceptance was personally received by Buyer or Buyer's authorized agent on (date) \_\_\_\_\_ at \_\_\_\_\_ ☐ AM ☐ PM. A binding Agreement is created when a Copy of Signed Acceptance is personally received by Buyer or Buyer's authorized agent whether or not confirmed in this document. Completion of this confirmation is not legally required in order to create a binding Agreement. It is solely intended to evidence the date that Confirmation of Acceptance has occurred.

**REAL ESTATE BROKERS:**

- A. Real Estate Brokers are not parties to the Agreement between Buyer and Seller.  
 B. Agency relationships are confirmed as stated in paragraph 39 above.  
 C. If specified in paragraph 2A, Agent who submitted offer for Buyer acknowledges receipt of deposit.  
 D. COOPERATING BROKER COMPENSATION: Listing Broker agrees to pay Cooperating Broker (Selling Firm) and Cooperating Broker agrees to accept, out of Listing Broker's proceeds in escrow, (i) the amount specified in the MLS or PDS, provided Cooperating Broker is a Participant of the MLS or PDS in which the property is offered for sale or a reciprocal MLS or PDS; or (ii) ☐ (If checked) the amount specified in a separate written agreement (C.A.R. Form CBC) between Listing Broker and Cooperating Broker.

Real Estate Broker (Selling Firm) Danville Realty Corporation

By \_\_\_\_\_  
 Address 21790 Hesperian Boulevard City Hayward Date March 24, 2006  
 Telephone (510) 582-2025 Fax (510) 882-8901 State CA Zip 94542  
 E-mail edbullock@comcast.net

Real Estate Broker (Listing Firm) TRI Commercial

By \_\_\_\_\_  
 Address One California Street, Suite 200 City San Francisco Date \_\_\_\_\_  
 Telephone (415) 268-2200 Fax (415) 268-2299 State CA Zip 94111  
 E-mail gguiz@tricommercial.com

**ESCROW HOLDER ACKNOWLEDGMENT:**

Escrow Holder acknowledges receipt of a Copy of this Agreement. (If checked, ☐ a deposit in the amount of \$ \_\_\_\_\_ counter offer numbers \_\_\_\_\_ and \_\_\_\_\_).

\_\_\_\_\_ and agrees to act as Escrow Holder subject to paragraph 40 of this Agreement, any supplemental escrow instructions and the terms of Escrow Holder's general provisions.

Escrow Holder is advised that the date of Confirmation of Acceptance of the Agreement as between Buyer and Seller is \_\_\_\_\_

Escrow Holder Old Republic Title Company

By \_\_\_\_\_ Escrow # \_\_\_\_\_  
 Address 20960 Redwood Road, Suite 160, Castro Valley, CA 94546 Date \_\_\_\_\_  
 Phone/Fax/E-mail (510) 537-8000 Office (510) 882-8901

Escrow Holder is licensed by the California Department of ☐ Corporations, ☒ Insurance, ☐ Real Estate. License # \_\_\_\_\_

(\_\_\_\_\_/\_\_\_\_\_) REJECTION OF OFFER: No counter offer is being made. This offer was reviewed and rejected by Seller on \_\_\_\_\_ (Date)

THIS FORM HAS BEEN APPROVED BY THE CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.). NO REPRESENTATION IS MADE AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION IN ANY SPECIFIC TRANSACTION. A REAL ESTATE BROKER IS THE PERSON QUALIFIED TO ADVISE ON REAL ESTATE TRANSACTIONS. IF YOU DESIRE LEGAL OR TAX ADVICE, CONSULT AN APPROPRIATE PROFESSIONAL. This form is available for use by the entire real estate industry. It is not intended to identify the user as a REALTOR®. REALTOR® is a registered collective membership mark which may be used only by members of the NATIONAL ASSOCIATION OF REALTORS® who subscribe to its Code of Ethics.



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Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



\*A REVISED 10/02 (PAGE 10 OF 10)

COMMERCIAL PROPERTY PURCHASE AGREEMENT (CPA PAGE 10 OF 10)

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Faith Follows